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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/917,143

07/27/2001

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PRA 2 0006

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03/25/2009

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EXAMINER

BEKERMANN, MICHAEL

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

03/25/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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3 UNITED STATES PATENT AND TRADEMARK OFFICE  
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5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
8

9 *Ex parte* FRANCIS M. SHERWIN, MICHAEL A. KERESMAN III,  
10 RAVISHANKAR S. BHAGAVATULA,  
11 and CHANDRA S. BALASUBRAMANIAN  
12

13 Appeal 2008-5161  
14 Application 09/917,143  
15 Technology Center 3600  
16

17 Decided: <sup>1</sup> March 25, 2009  
18

19 *Before:* MURRIEL E. CRAWFORD, ANTON W. FETTING and DAVID  
20 B. WALKER, *Administrative Patent Judges.*  
21  
22 CRAWFORD, *Administrative Patent Judge.*  
23

24 DECISION ON APPEAL  
25  
26

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 12 to 23. Claims 1 to 11 have been canceled and claims 24 to 28 have been withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented an affinity shopping portal and business model for generating contributions to charitable, non-profit and other affinity groups (Specification 1).

Claim 17 under appeal reads as follows:

17. A shopping portal comprising:

means for maintaining a presence on a communications network such that shoppers employing the communications network can be received;

means for identifying received shoppers;

means for forwarding shoppers to selected shopping sites maintained on the communications network;

means for monitoring forwarded shoppers activities at the shopping sites to which the shoppers are forwarded;

means for obtaining click through fees based upon the monitored activities of shoppers at the shopping sites to which the shoppers were forwarded;

means for distributing a portion of each obtained click through fee to an affinity group associated with the shopper responsible for generating the click through fee;

means for reporting to shoppers an amount distributed to the shoppers' associated affinity groups by the distributing means; and

1 customizing means for a representative of an affinity group to create a  
2 customized web site for the affinity group.

3 The Examiner rejected claim 17 under 35 U.S.C. § 102(e) as  
4 being anticipated by Bain.

5 The Examiner rejected claim 12 under 35 U.S.C. § 103(a) as being  
6 unpatentable over Bain.

7 The Examiner rejected claims 13 to 16 under 35 U.S.C. § 103(a) as  
8 being unpatentable over Bain in view of Dorff.

9 The Examiner rejected claims 18 to 23 under 35 U.S.C. § 103(a) as  
10 being unpatentable over Bain in view of Slatalla.

11 The prior art relied upon by the Examiner in rejecting the claims on  
12 appeal is:

13 Dorff US 2001/0025263 A1 Sep. 27, 2001

14 Bain US 2001/0053997 A1 Dec. 20, 2001

15 Slatalla, Michelle, USER'S GUIDE; Building Web Pages Is Child's Play  
16 New York Times, NY (Late Ed. East Coast) (May 7, 1998) pp. G.11  
17

## 18 ISSUES

19 Have Appellants shown that the Examiner erred in finding that Bain  
20 discloses a shopping portal that includes a customizing means for a  
21 representative of an affinity group to create a customized web site for the  
22 affinity group?

## 23 FINDINGS OF FACT

24 Appellants invented a shopping portal which includes means for  
25 distributing a portion of collected fees to an affinity group (Specification  
26 [0028 to 0029]). The portal includes a server 12 that includes a portal

1 creation application 512 (Specification [0038]). The creation application 512  
2 collects data about the affinity group and the template for the physical  
3 layout, font and color of the website (Specification [0038]). The shopping  
4 portal includes a hyperlink to the website of the affinity groups  
5 (Specification [0028]).

6 Bain discloses a shopping portal for users who want to shop and  
7 have their cause or organization or affinity group receive credit for their  
8 purchases. The affinity group registers with a preference processing site by  
9 registering their website or by providing a brief summary of information on  
10 the site for review [0030]. The users shop through a preference processing  
11 site [0020]. The preference processing site presents through a graphical,  
12 text, or menu format a number of affinity group selections that the user can  
13 choose from to assign commissions or credits from the purchases [0033].  
14 The menu may include a hyperlink to information about the non-profit  
15 organization or to a site affiliated with the non-profit organization. The brief  
16 summary of information provided by the affinity group to be displayed on  
17 the shopping portal cite is not a separate website for the affinity group.  
18 Bain does not disclose a means to create a customized website for the  
19 affinity group.

20 A website is a group of World Wide Web pages usually containing  
21 hyperlinks to each other and made available online by an individual,  
22 company, educational institution, government, or organization. *Merriam*  
23 *Webster Online Dictionary*, 11<sup>th</sup> ed., available at [http://www.merriam-](http://www.merriam-webster.com/dictionary/website)  
24 [webster.com/dictionary/website](http://www.merriam-webster.com/dictionary/website) (last visited March 24, 2009).

1 PRINCIPLES OF LAW

2 A claim is anticipated only if each and every element as set forth in  
3 the claim is found, either expressly or inherently described, in a single prior  
4 art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631,  
5 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987).  
6

7 ANALYSIS

8 We agree with the Appellants that Bain does not disclose a shopping  
9 portal that includes a customizing means for a representative affinity group  
10 to create a customized web site. The information discussed in paragraph  
11 0030 of the Bain reference is a listing of information not a website for the  
12 affinity group. Bain does not include a means to customize a website for  
13 the affinity groups. We do not agree with the Examiner that the information  
14 about the affinity group discussed in the Bain reference is “customized”  
15 by providing additional information. There is no disclosure in Bain that  
16 any information is customized in accordance with the desires of a particular  
17 affinity group. Further, Bain does not disclose that this information about  
18 a particular affinity group is contained on a page dedicated to the affinity  
19 group rather than a list, for example, of information about several affinity  
20 groups on one page. Lastly, there is no disclosure that the information page  
21 is a website as understood by those skilled in the art.

22 In view of the foregoing, we will not sustain the Examiner’s rejection  
23 of claim 17 under 35 U.S.C. § 102(e) as anticipated by Bain.

24 We will likewise not sustain the Examiner’s rejection under 35 U.S.C.  
25 of claim 12, which is dependent on claim 17, as being unpatentable over

1 Bain, because Bain does not disclose or suggest the claimed customizing  
2 means to create a customized web site for the affinity group.

3 We will also not sustain the Examiner's rejections under 35 U.S.C.  
4 § 103(a) of claims 13 to 16 and 18 to 23, which are dependent on claim 17,  
5 because the Examiner relies on Bain for disclosing or suggesting the claimed  
6 customizing means to create a customized website for an affinity group we  
7 have found Bain does not disclose or suggest.

8 CONCLUSION OF LAW

9 On the record before us, Appellants have shown that the Examiner  
10 erred in rejecting claims 12 to 23.

11 DECISION

12 The decision of the Examiner is reversed.

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14  
15  
16  
17 JRG

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